THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Date: 18—08—2005

W.P. No. 11160 of 2005

Between:

M/s. Handy Instant Foods,

Vijayawada …Petitioner.

A n d

The Commercial Tax Officer,

Krishnalanka Circle,

Vijayawada and another.

…Respondents

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. No. 11160 of 2005

O R D E R: (per Sri B. Sudershan Reddy, J)

We find no substance in this writ petition. This writ petition is directed against the very assessment order dated

28.3.2005 passed by the Commercial Tax Officer, Krishnalanka Circle, Vijayawada. The reason for not filing the appeal by the petitioner, according to it, is that no useful purpose would be served by preferring the appeal since the Government vide its Memo No.25438/Court.II (1)/2004-1, dated 30.09.2004, relying upon a decision of the Sales Tax Appellate Tribunal in M/s Gokul Agencies, Visakhapatnam v. State of Andhra Pradesh in T.A.No. 619 of 1990, dated 2.7.1992, issued clarification directing that the tax under VI Schedule for general (un-classified) goods is 10% up to 31.12.1999 with effect from 1.4.1995 and 12% with effect from 1.1.2000. The petitioner's apprehension is that the appellate authority would merely rely upon the said memo and accordingly impose the rate of tax.

We have perused the Memo dated 30.9.2004, which obviously has not been issued by the Government in purported exercise of the power conferred upon it under Section 42 of the A.P. General Sales Tax Act, 1957. That at any rate, it is unnecessary to make any further detailed enquiry into this aspect of the matter, for the case set up by the petitioner is that the decision rendered by the Sales Tax Appellate Tribunal in M/s. Gokul Agency, Visakhapatnam v. State of Andhra Pradesh in T.A.No.619 of 1990, dated 2.7.1992, has no application to the facts on hand. In our considered opinion, this aspect of the matter can as well be gone into by the appellate authority uninfluenced by the observations made in the Memo dated 30.9.2004. The appellate authority is not precluded from considering the contention that the decision of the Sales Tax Appellate Tribunal in M/s. Gokul Agency, Visakhapatnam v. State of Andhra Pradesh is not applicable to the facts-situation of the matter and that question is

left open. The petitioner is entitled to canvass the same before the appellate authority, in which event, the matter may have to be decided on its own merits.

The writ petition fails and shall accordingly stand dismissed without expressing any opinion on any of the contentions raised in the writ petition. The petitioner shall be entitled to raise all the contentions raised in the writ petition and such other contentions, as may be available to it in law. The interim order dated 10.5.2005 is accordingly vacated.

Having regard to the pendency of this writ petition in this Court, we consider it appropriate to permit the petitioner to prefer appeal within 10 days from today, which shall be received by the appellate authority for its consideration and disposal on merits.

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B. Sudershan Reddy, J.

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Ramesh Ranganathan, J.

Date: 18—08—2005.

Note: C.C. by tomorrow.

(BO)

MVB.